In the High Court of Gujarat at Ahmedabad.

Special Civil Application No.8823 of 2001

Coram : P.B. Majmudar, J.
(21st March, 2002)

ORAL JUDGMENT

Rule returnable today. Mr.Munshaw, learned Advocate, waives service of Rule on behalf of the respondents. With the consent of the parties, the petition is taken up for final hearing today.

The petitioners have filed this petition for quashing and setting aside the order dated 18.9.2001 passed in M.A.C.P.No.M-11/2001, below Exhibit 1, filed by the petitioners herein to restore to file M.A.C.P.No.96 of 1992.

The mother of the petitioners filed a claim petition, being M.A.C.P.No.96 of 1992, claiming compensation of Rs.50,000/-. During the pendency of the claim petition, the mother of the petitioners died. Vide order dated 21.11.2000, the learned City Civil Judge dismissed M.A.C.P.No.96 of 1992 for want of prosecution. Subsequently, M.A.C.P.No.M-11/2001 was filed for restoration of the aforesaid M.A.C.P.No.96 of 1992. The learned Judge of the City Civil Court dismissed the said application for restoration of the main application by her order dated 18.9.2001. Aggrieved by the aforesaid order, the present Special Civil Application has been filed.

It is required to be noted that the restoration application, i.e. M.A.C.P.No.M-11/2001, was filed by the Advocate concerned. Even that application was filed without bringing the heirs on record. In my view, therefore, the learned Judge was perfectly right in rejecting the said application as the same was not maintainable, firstly, on the ground that the same was filed without the heirs being brought on record. In fact, moment the original claimant died, the original application, i.e. M.A.C.P.No.96 of 1992, cannot be proceeded further unless the heirs are brought on record and, therefore, that restoration application could not have been filed by the Advocate under her signature. It is also required to be noted that the moment the original

claimant died, the Advocate had no authority to represent her case any further because her authority to argue the case also came to an end moment the original claimant died. Unfortunately, the Advocate concerned has not taken reasonable care and the application seems to have been filed in hot hurry and without verifying the provisiones of law. Under these circumstances, in my view, the trial court was absolutely right in coming to the conclusion that the said application was not maintainable.

However, Mr.Gupta, who is appearing for the petitioners herein, who are the heirs of the deceased claimant, has submitted that the petitioners may be given an opportunity to make necessary application in the trial court for setting aside the ex parte Award as well as for giving necessary application to allow them to be brought on record of the main Application in case the original ex parte Award is set aside by the Court. The learned Advocate appearing for the other side has fairly stated that the respondent has no objection if such permission is granted.

In the aforesaid view of the matter and in order to see that the heirs of the claimant can continue the original proceedings, the heirs of deceased Hiraben Bhogilal Soni, i.e. the original claimant of M.A.C.P.No.96 of 1992, are permitted to file fresh application for setting aside the order of dismissal of claim petition, which was dismissed for default. If such application is filed by the heirs of the deceased claimant, the Tribunal may pass appropriate order regarding restoration of the main M.A.C.P.No.96 of 1992. The Tribunal may not reject the said application on the ground of delay as the learned Advocate for the respondent has also fairly stated that the respondent has no objection if the main Claim Petition is restored. Accordingly, the petitioners, who are the heirs of the deceased claimant, are permitted to file a fresh application for setting aside the ex parte Award and after the claim petition is restored, they may be allowed to be brought on record of the main Claim Petition so that they can proceed with the main Claim Petition in accordance with law. This order is passed considering the concession of the respondent as well as considering the fact that the real issue involved in the main petition may not suffer, and keeping the aforesaid aspect in mind, permission is granted to the petitioners to file the application, as indicated above.

This petition is accordingly allowed to the

aforesaid extent, as indicated above. Rule is accordingly made absolute, with no order as to costs.

It is clarified that the order imposing costs against the concerned Advocate shall remain intact and that part of the order is not disturbed by this Court while disposing of this Special Civil Application.

(P.B. Majmudar, J.)

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(apj)